IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 2ND FEBRUARY 2007 / 13TH MAGHA 1928

OP.No. 9192 of 2002(T)

PETITIONER:

SUNNYKUTTY THOMAS, PAREKKULATH HOUSE
THODANAL, MEENACHILL,KOTTAYAM DISTRICT.

BY ADV. SRI.K.S.MENON

RESPONDENTS:
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1. THE DEPUTY COLLECTOR (RR),KERALA
FINANCIAL CORPORATION,TRIVANDRUM 695 033.

2. THE DEPUTY TAHSILDAR (RR),KERALA
FINANCIAL CORPORATION,ERNAKULAM NORTH.

BY ADV. SRI.T.V.GEORGE, SC, KFC
BY GOVERNMENT PLEADER SMT. SMITHA

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 02/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP 16392 OF 2002 IN OP 9192 OF 2002

DISMISSED

2.2.2007 SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 PHOTOCOPY OF THE NOTICE DATED 20.1.2001

EXT.P2 COPY OF THE ORDER DATED 30.5.2001

EXT.P3 COPY OF THE APPLICATION DATED 24.10.2001

EXT.P4 PHOTOCOPY OF THE CERTIFICATE DATED 7.5.2001

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

O.P. NO. 9192 OF 2002

Dated this the 2nd day of February, 2007

JUDGMENT

Petitioner purchased 9 cents and 450 sq. links of land in Sy. No. 179/7B in Edappally South Village in revenue auction conducted by the second respondent for recovery of arrears due from the owner of the property to KFC. The sale notice is produced as Ext.P1 and confirmation of sale dated 30.5.2001 is produced as Ext.P2. However, after confirmation of sale, respondents demanded the petitioner to produce stamp paper for execution of sale document in favour of the petitioner as required under Section 56(1) of the RR Act. Petitioner wrote Ext.P3 letter to the first respondent stating that registration is required only if petitioner demands possession under Section 57(2) of the RR Act. Counsel for the petitioner admitted in court that petitioner has got possession of the property. I do not understand how petitioner can contend before the first respondent that petitioner does not need possession of the property because only by virtue of revenue authority permitting him to take over possession of the property, petitioner got possession. However, irrespective of whether possession is taken over

by the petitioner voluntarily or whether possession was formally handed over by the revenue authorities, the only question to be considered is whether stamp duty is payable on the sale document to be executed under Section 56 of the RR Act. It is clear from Section 17(2)(xii) of the Indian Registration Act that certificate of sale granted to the purchaser of any property sold by public auction by civil or revenue officer is a compulsorily registrable document. Section 3 of the Kerala Stamp Act 1959 describes instruments on which stamp duty is payable. Item 16 of the Schedule to the said Act specifically covers certificate of sale granted to the purchaser of any property sold by public auction by a civil or revenue court, or by the Govt., Collector or other revenue officer and the stamp duty payable is the same duty as on conveyance as provided under item 21 or 22 of the said Schedule. It is seen that stamp duty demanded by the respondents from the petitioner is consistent with item 16 of the Schedule to the Stamp Act. Petitioner cannot contend that petitioner took over possession after confirmation of sale without any permission whatsoever from the respondents, and therefore there is no need to register the document or pay stamp duty. Confirmation of sale under Section 54 of the RR Act by itself does not conclude sale proceedings under the RR Act because of Sections 56

and 57 which provided for execution and registration of documents of sale. There is no provision in the RR Act exempting sale under the RR Act from the stamp duty payable under the separate statute namely Kerala Stamp Act 1959. Therefore Section 57(2) of the RR Act on which petitioner bases his case does not entitle the petitioner from exemption of stamp duty which is specifically made payable under the above provisions of the Act. In fact no sale under the RR Act is exempt from stamp duty. Stamp duty at applicable rate is payable under the Kerala Stamp Act. O.P. is therefore devoid of any merit and is dismissed. If petitioner does not pay stamp duty it is for the Collector to adjudicate on penalty as the document is compulsorily registrable and stamp duty is payable by the petitioner. If petitioner offers to make payment of stamp duty at the same rate originally demanded and registration fees within six weeks from now, the same should be accepted and document registered, failing which penalty should be levied.

(C.N.RAMACHANDRAN NAIR)
Judge